



STATE OF DELAWARE

PUBLIC SERVICE COMMISSION

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MEMORANDUM

TO: The Chairman and Members of the Commission

FROM: Connie McDowell, Senior Regulatory Policy Administrator

DATE: September 15, 2016

SUBJECT: IN THE MATTER OF THE PETITION OF DIRECT ENERGY SERVICES, LLC TO REQUEST THE PUBLIC SERVICE COMMISSION TO ISSUE, ON AN EXPEDITED BASIS, AN ORDER DIRECTING DELMARVA POWER & LIGHT COMPANY TO DISTRIBUTE AN EDUCATIONAL BILL INSERT REGARDING THE OPTIONS AVAILABLE UNDER THE CONTRACT AWARDED BY THE STATE OF DELAWARE (FILED JUNE 30, 2016)- PSC Docket No. 16-0744

Background

Section 68 of the FY2016 Bond and Capital Improvements Act of the State of Delaware created an Electricity Affordability Committee (the "Committee") to evaluate an opt-in electricity affordability program for residential and small business customers based on the potential benefits derived from a combination of a multi-year fixed price per kWh offer, value added products and services to help customers better manage their overall energy bills, and other potential consumer benefits. On January 22, 2016, as authorized by the Committee, the PSC issued a Request for Proposals from electric suppliers seeking the best electric supply offer for residential and small commercial customers. On April 22, 2016, the Committee accepted PSC Staff's recommendation that the Direct Energy Service's proposal offered the most benefits to residential and small business customers. On June 16, 2016, the Secretary of State executed a contract with Direct Energy to provide a State certified voluntary opt-in electric supply product for Delaware residential and small commercial customers.

On June 30, 2016, Direct Energy Services petitioned the Public Service Commission to issue an order directing Delmarva Power & Light Company to distribute an educational bill insert to all residential and small commercial customers describing the options available under the contract. On August 31, 2016, along with other commenting parties, Direct Energy Services filed comment and supporting testimony on behalf of their petition. On September 3, 2016, Delmarva Power & Light Company filed an Emergency Motion to postpone the scheduled September 20 consideration of Direct Energy's petition and to allow for discovery; or as an alternative to strike Direct Energy's written comment and incorporated expert testimony. On September 3, 2016, the Division of the Public Advocate filed comment supporting Delmarva Power & Light Company's motion and asking the Commission to strike Direct Energy's comments and prefiled testimony.

Application

Direct Energy Services Petition to the Commission was filed, requesting the Commission to issue an order directing Delmarva Power & Light Company to distribute an educational bill insert to all residential and small commercial customers describing the options available under the contract. On July 26, 2016, under Commission Order 8922, the Commission opened this docket authorizing a public notice to solicit written comments and/or interventions from interested persons for the Commission's consideration of the Petition on or before August 31, 2016 and further noticed the Commission would hear this matter directly at its regularly scheduled meeting on September 20, 2016.

On August 31, 2016, Direct Energy Services filed comments and witness testimony in support of their petition. Typical Commission procedure under such circumstances would permit all parties to have opportunity for discovery and reply testimony, in contrast to how the Commission expected to process the petition in expedited fashion. And as previously noted, both Delmarva Power and the Public Advocate took exception to Direct Energy Services comment and witness testimony seeking opportunity for discovery and reply testimony.

Staff Recommendation

Based on Staff's review of the various filings, Staff concludes that there are only two possible paths forward to ensure the petition is given proper attention and the case can move forward on firm legal grounds. Staff believes that Delmarva's emergency motion raises a substantial issue that can only be resolved in two ways:

1. By a more lengthy procedural schedule to include discovery, opportunity for reply testimony, delay of the currently scheduled hearing, and opportunity for oral argument at a rescheduled evidentiary hearing. The Commission may want to consider assigning a Hearing Examiner to set the procedural schedule and to provide a Findings and Recommendations report back to the Commission.
2. As an alternative suggested by both Delmarva Power and the Public Advocate, the Commission could strike the comment and witness testimony from the docket and proceed with oral argument at the currently scheduled hearing on September 20, 2016.

Since this circumstance is the result of Direct Energy Service's petition, comment and testimony and another party's emergency motion, combined with Public Advocate support, the Commission may want to offer Direct Energy Services the option of a longer procedural schedule in fairness to all parties or the option of withdrawing their comment and witness testimony. In the event, Direct Energy Services is willing to withdraw its comment and witness testimony, it would appear the Commission could continue on with legal arguments in the hearing process. Otherwise, Staff believes the Commission should assign the docket to a Hearing Examiner to conduct the proper evidentiary review and to issue a Findings and Recommendations report.